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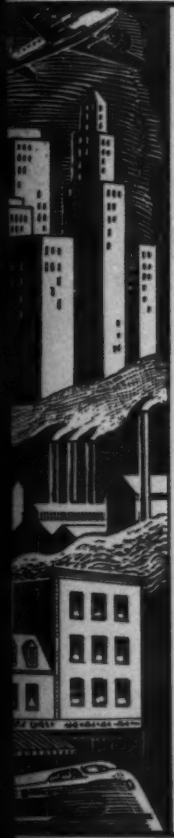

New Texas Business Corporation Act

by The Corporation Trust Company and Associated Companies

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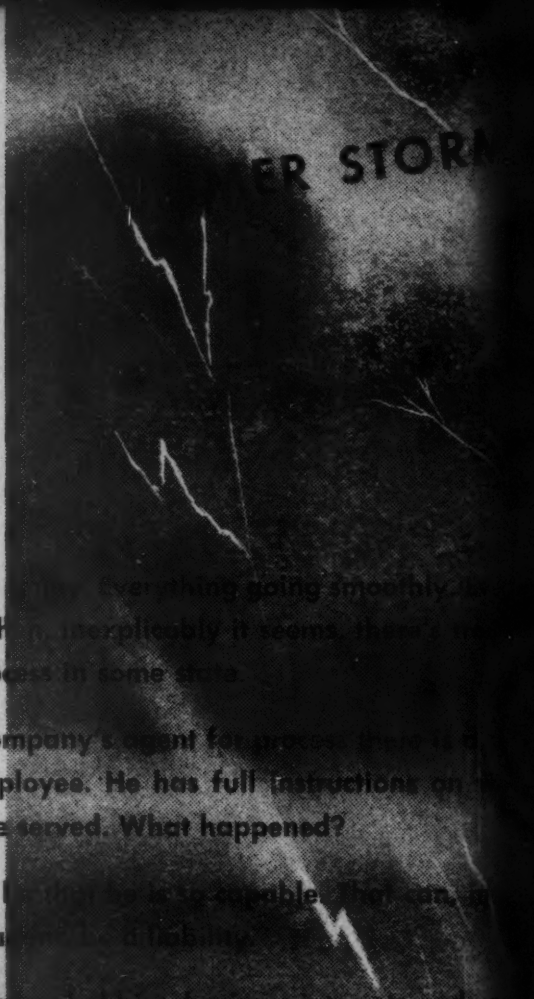

Everything bright and ... Everything going smoothly. ... thing under control. Th... Inexplicably it seems, there's ... about a service of proc... in some state.

How can it be? The company's agent for process there is a ... able, dependable employee. He has full instructions on ... to do when papers are served. What happened?

The trouble may well ... that he is temporarily ... case of an employee a... disabling ...

Like any individual, he ... hobbies, business interests and va... tion periods which tak... him out of town — perhaps when ... good business sense is ... needed most.

For complete protectio... only the CT System of Corporate ... tection will do. CT neve... or suspension, never goes on ... or motoring trip, neve... sick. When process is ... official communication ... received, CT is already ... it and forward it to the ... proper party.

The
CORPORATION JOURNAL

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JUNE—JULY 1955

Contents

Recent Decisions

Every day seems to bring news of another merger or consolidation – and with it, for lawyers, a tedious, complicated job. Merger, dissolution, qualification, incorporation or withdrawal papers – sometimes all of them – have to be compiled, then filed in a large number of states. Often the filings have to be handled on a hair-trigger schedule.

That's probably why in such cases counsel *96 times out of a hundred* calls upon the experience of the continent-wide CT organization to furnish information about the various state's requirements, assist in compiling papers, obtain all necessary certificates and then to file and record all papers in exact accordance with the schedule counsel set up.

These same CT facilities are available to any lawyer through any CT office across the nation. There's one close to you.

New Texas Business Corporation Act

A NEW Texas Corporation Law, to be known as the "Texas Business Corporation Act" has been enacted by House Bill 16, Laws of 1955. It becomes effective ninety days after adjournment of the Texas Legislature, which is still in session. Adjournment on or about May 27, 1955, is anticipated, in which event the new law will go into effect on August 25. This new law is patterned after the Model Business Corporation Act (Revised), drafted by the Committee on Business Corporations of the American Bar Association.

The old Corporation Law will continue in effect for a period of five years after the effective date of the new Act. Texas corporations in existence on the effective date of the new Act, and all foreign corporations which have been qualified prior to that date, will continue to be governed by the old law until the expiration of the five year period. However, such corporations may voluntarily elect to adopt the provisions of the new Business Corporation Act by following a procedure prescribed in the Act. After the effective date, all new organizations of Texas companies and all new foreign corporation qualifications must be effected under the new Act.

At the end of the five year period, the new Act will automatically apply to all Texas corporations and all foreign corporations not already subject to it, and all prior laws inconsistent with the new Act will be repealed.

Domestic Corporations

A corporation may be incorporated for any lawful purpose or purposes under the new law, whereas under the old law a corporation may be formed only for the purpose or purposes specified in one of the subdivisions of Article 1302. Other than the usual exclusion of banks, trust companies, insurance companies and the like, there are only two limitations in the new Act upon the purposes of a corporation. The business of raising cattle and owning land therefor may not be combined with the business of operating stockyards and slaughtering, refrigerating, curing, canning or packing meat. Nor may the petroleum oil producing business be combined with the business of engaging directly in the oil pipeline business in Texas.

Domestic corporations organized under or adopting the provisions of the new Business Corporation Act are required to designate and maintain a registered office and a registered agent for service of process. The latter may be a corporation. The old law does not require a domestic corporation to appoint a process agent.

The new Act stipulates that the name of a domestic corporation must contain one of the words "corporation", "company", "incorporated", or an abbreviation thereof. The old law does not require the use of any word in the corporate name denoting a corporation. There are also provisions in the new law for the reservation and protection of the corporate name.

Other modern type provisions in the new Act which were generally lacking in the old law include: stockholders may exercise cumulative voting unless

the articles of incorporation otherwise provide; stockholders' meetings may be held within or without the State as the by-laws provide; there are more liberal provisions with reference to classes of stock and the preferences, rights and limitations which may be attached to the shares; a corporation has the right to purchase and hold its own shares under certain restrictions; it has the power to acquire and hold shares or other interests in other corporations; there is authority for the creation of voting trusts not exceeding ten years duration.

The board of directors may be classified as to term of office, and meetings of the directors may be held within or without the State.

Broad authority for merger and consolidation is outlined in the new law. This may be contrasted with the very limited authority under the old law for the consolidation of two domestic milling, elevator and warehouse corporations. The new law will authorize merger or consolidation of two or more domestic corporations, or of domestic and foreign corporations.

Under the new law perpetual existence is authorized. The old law provided for limited existence.

Foreign Corporations

In general the provisions of the new law with reference to foreign corporations follow closely those of the Model Act. It is no longer necessary that a foreign corporation applying for admission have at least $100,000.00 paid in in cash for its capital stock, or at least 50% of the authorized capital stock subscribed and at least 10% thereof paid in. Under the new law the application for certificate of authority must show that consideration of the value of at least $1,000.00 has been paid for the issuance of shares. Possibly, however, the requirement that a domestic corporation shall not commence business until there has been paid up on its shares either $1,000.00 or 10% of the total capitalization, whichever is greater, may be applied to foreign corporations as well.

The new law provisions as to purposes apply to foreign corporations. Consequently, a foreign corporation may be qualified for any lawful purpose or purposes, subject to the restrictions mentioned above in connection with domestic corporations.

Foreign corporations qualified under or adopting the new Act must designate and maintain a registered office and registered agent for service of process. The agent may be a corporation. Previously the law provided only for the appointment of an individual as process agent.

If the name of a foreign corporation does not contain the word "corporation", "company", "incorporated", or "limited", or an abbreviation of one of such words, the corporation must agree to add at the end of its name one of such words or an abbreviation thereof. There are provisions for reservation and protection of the corporate name which are similar to those applying to domestic corporations. In addition, a foreign corporation not authorized to transact business in Texas may register its corporate name, provided the name is not the same as or deceptively similar to the name of another corporation, domestic or foreign, authorized to do business in Texas or to any reserved or registered corporate name.

The new Act continues the requirement of the old law that authority to do business shall be renewed every ten years. Under the new law application for renewal of certificate of authority is made in the same form as in the case of an original application.

There are the usual provisions for filing evidence of an amendment to a foreign corporation's charter, mergers, amended certificate of authority in the event of a change of name or a change in the purposes to be pursued in the State, application for withdrawal, and penalties for doing business without qualifying.

Voluntary Election To Adopt The New Act

Counsel may wish to study the advisability of early adoption of the new Act. Many domestic and foreign corporations are seriously restricted as to the authorized purpose because of the necessity of using one of the stipulated clauses in the old Act. Many corporations have had to use a purpose clause which does not state precisely the nature of the business which the company actually carries on. Consequently, an election to adopt the new law followed by other appropriate proceedings will permit those corporations more precisely to state the business which they are carrying on in Texas.

Domestic corporations in particular may find other provisions in the new law which are attractive and suggest the advantage of immediate adoption. For instance, the right granted by the new law to hold stockholders' meetings outside of the State, more liberal provisions with reference to capital structure, and the up-to-date provisions with reference to mergers and consolidations.

Forms

Likely it will be some time before the Secretary of State's office makes final decisions on many unsettled questions which necessarily arise when a completely new Corporation Law has been enacted. According to present information it is unlikely that, for the present at least, the Secretary of State will promulgate printed forms for domestic corporations. Article 9.06 of the new Act provides that forms may be promulgated by the Secretary of State for all reports and all other documents required to be filed in the office of the Secretary of State, but the use of such forms is not mandatory, except in instances in which the law specifically so provides.

In the case of foreign corporations, the Secretary of State will undoubtedly prescribe a printed form for application for certificate of authority since the law contemplates that such application shall be on forms promulgated by the Secretary of State.

Filing Fees

The new Act specifies in detail the fees to be paid for filing various documents.

Article 3914 of the Texas Revised Civil Statutes, providing for payment of a graduated entrance fee by domestic or foreign corporations, is no longer in effect as to those corporations which are governed by the new Act.

Bills have been introduced, but not yet passed, which amend various articles of the Texas Revised Civil Statutes for the purpose of making the franchise tax laws consistent with the new Texas Business Corporation Act.

domestic corporations

ILLINOIS

Illinois Supreme Court affirms judgment holding unconstitutional statutory provision for staggering election of directors.

In *Wolfson v. Avery et al.*, the Circuit Court of Cook County, Illinois, on February 1, 1955, held that Section 35 of the Illinois Business Corporation Act, providing for a staggering of the election of directors, was unconstitutional. (The Corporation Journal, April—May, 1955, page 84.) Section 35 of the Act reads: "When the board of directors shall consist of nine or more members, in lieu of electing the whole number of directors annually, the by-laws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes."

Upon appeal to the Illinois Supreme Court, that court said: "The sole issue presented by the appeal is whether the classification of directors permitted by the statute, and their election for staggered terms, violate section 3 of article XI of the Illinois Constitution, which guarantees to stockholders the right to cumulate their votes in the election of directors."

After an exhaustive treatment of the subject, the court concluded that "the circuit court was correct in holding the statute unconstitutional, and its judgment is accordingly affirmed."

Wolfson v. Avery et al., Illinois Supreme Court, April 15, 1955. Commerce Clearing House Court Decisions Requisition No. 532790.

NEW JERSEY

Where corporation was merged into a corporation of another state, action for escheating of property held by it ruled maintainable only against the successor company.

The Supreme Court of New Jersey said: "This is an appeal by the State of New Jersey from an order of the Superior Court, Chancery Division, dismissing two complaints against the defendant on the ground that it is no longer a corporation of the State of New Jersey and was not and is not

subject to service of process within the State of New Jersey, and therefore the court lacked jurisdiction over the defendant."

The defendant was a New Jersey corporation. In 1951 it merged with a Delaware corporation. Under the merger, the Delaware corporation survived. The Delaware corporation had not qualified to do business in New Jersey. Subsequent to the merger, the state sought to escheat certain unclaimed personal property allegedly held by the New Jersey corporation.

The court noted that there was no provision in the merger statute, such as that found in the dissolution statute, that a corporation should be continued as a "body corporate" for the purposes of "prosecuting and defending suits by or against them" and "of disposing its property and closing its affairs but not to continue in business." Where two corporations merge, the statute is different, since, as the court pointed out, all the property of the former corporation vests in the successor corporation and all the liabilities of each become those of the successor corporation and there is no necessity to continue the existence of the merged corporation for purposes of suit. In affirming the decree of the lower court, dismissing the complaints, the court remarked that it seemed indisputable that a corporation ceasing to exist by reason of merger could not be sued in the absence of an express provision for the continuance of life for the purposes of suit to enforce claims of creditors and to enforce its own claims against others. "Our statute," said the court, "contains no such provision and under it the successor corporation succeeds to all assets and it alone may enforce its rights; it alone is liable to the creditors of the merged corporation, and it only may be sued for the enforcement of such rights in accordance with the provisions of the statute."

State of New Jersey v. National Power & Light Company, 109 A. 2d 607. Newton H. Porter, Jr. of Montclair, for appellant. George J. Lasky, of Newark, for respondent (Riker, Emery & Danzig, of Newark, attorneys).

NEW YORK

Section 61-b, G.C.L., providing for security for costs, held to require plaintiff in derivative suit to own stock in corporation in whose right action was instituted.

Movant, defendant Autocar Company, applied for an order under Section 61-b, General Corporation Law, directing the plaintiff to furnish security for expenses incurred or to be incurred by that company in connection with the suit. The application was resisted on the ground that the plaintiff, and another party, who sought to intervene, had a total holding of stock in the White Motor Company, another defendant, in excess of the $50,000 called for by Section 61-b. Plaintiff contended that the provision of the section had been fulfilled, since Autocar was in dissolution and since all the White preferred stock owned by him and the other party was issued by White to acquire the assets of Autocar. Movant pointed out, however, that the plaintiffs were holders of White stock and not Autocar having a value in excess of $50,000 or constituting 5% of the outstanding shares of the class. It also argued that owner-

ship of White stock was not the test and that the statute required ownership of Autocar stock in order for plaintiff to be relieved of the necessity of furnishing security to it.

The Supreme Court, Special Term, New York County, Part I, granting the motion prayed for, said: "The derivative aspect of this action is in the right of and for the benefit of Autocar and the stockholdings of the plaintiff and any intervenors in that corporation is the factor which determines whether Autocar is entitled security for costs. Section 61-b, supra, clearly requires ownership of stock in the corporation in whose right the action is instituted or maintained, in this instance, Autocar. Accordingly the motion is granted."

Altman v. Autocar Company, et al., 133 N. Y. S. 2d 535. Israel Beckhardt of New York City, for plaintiff. Payne & Steingarten of New York City, for defendant (Henry W. Steingarten, Herschel M. Weinberg of New York City, of counsel).

OHIO

Attempt to classify three directors, with three-year terms staggered so that one would be elected each year, thus preventing cumulative voting, ruled invalid by Court of Appeals.

The Court of Appeals of Ohio said: "The action seeks to determine the rights of the plaintiff as minority stockholder, at an annual meeting of the stockholders, with respect to a resolution amending the code of regulations to provide three-year terms for directors instead of one-year terms as was provided by the code of regulations when the meeting was called and providing that such terms should be staggered so that one director will be elected at each annual meeting thereafter, under the provisions of Sec. 1701.64 R. C., thus preventing the plaintiff by the use of cumulative voting, under the provisions of Sec. 1701.58, R. C., as a minority stockholder, owning and representing in excess of forty per cent of the issued and outstanding stock of said company, from having representation on the board of directors."

The amended by-law attempted to classify a three-man board of directors by providing for three-year terms, in lieu of one-year terms previously in effect. It also provided that the three-year terms should be staggered so that one director would be elected at each annual meeting. The court was faced with two conflicting sections of the same statute, one of which authorized cumulative voting, the other permitting staggered election of directors.

Upon a review of the legislative history of the statute involved, the court noted that the right of a stockholder in an Ohio corporation to cumulate his vote was provided by law for more than fifty years, and that the legislature, upon a revision of the statute in 1927, showed clearly that it intended to strengthen the cumulative voting provision by adding to existing law the provision that a corporation could not restrict cumulative voting by its articles or code of regulations. Furthermore, the court observed that the legislature did not intend that the classification of directors could be used to nullify the right of cumulative voting. The resolution of the defendant corporation which attempted to classify directors was ruled invalid and judgment was rendered for the plaintiff.

Humphrys et al. v. The Winous Company et al., 125 N. E. 2d 204. Thompson, Hine & Flory of Cleveland, for plaintiffs-appellants. Horace Andrews, of Cleveland, for defendants-appellees.

SOUTH CAROLINA

Service, in stockholder's derivative suit, upon nonresident director of domestic corporation effected under statute by delivering summons to Secretary of State, who forwarded notice to such director, ruled valid.

In a stockholder's derivative suit brought against the defendant South Carolina corporation and others, service was made upon a nonresident director under Section 10-432.1 of the South Carolina Code of 1952. This provided for service upon any nonresident director of a domestic corporation by delivering two copies of the summons to the Secretary of State, one of which was to be forwarded to such director by the state official. The defendant appeared and moved to quash the service on the ground that it was unconstitutional and in violation of the due process clause of the 14th Amendment.

The United States District Court, E. D. South Carolina, Charleston District, upon a review of the pertinent decisions of the Supreme Court of the United States, noted that where a state has an interest in regulating operations and transactions by nonresidents, it has power to enact appropriate legislation for the bringing of a nonresident into its forum in actions affecting his transactions in that state. Furthermore, the court observed that South Carolina has expressed interest in the conduct of directors of domestic corporations and the proper performance of their duties and concluded that the state has power to regulate the actions of such directors. The motion to quash service was denied.

Wagenberg v. Charleston Wood Products, Inc. et al., 122 F. Supp. 745. Shimel & Ackerman of Charleston and Royall & Wright of Florence, for plaintiff. Corning B. Gibbs of Charleston, for defendant A. Rochlin.

foreign corporations

CALIFORNIA

Solicitation of orders through mails by catalog and price lists held not doing business for purpose of service of process.

The petitioner, an Illinois corporation, sought to restrain the San Mateo Superior Court from proceeding in an action in which it was the defendant,

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on the ground that the corporation did no business in California and was not, consequently, subject to the jurisdiction of that court. Furthermore, a writ was sought to compel the Superior Court to vacate its order denying petitioner's motion to quash the substituted service made upon it.

The petitioner was not qualified to do business in California; it maintained no office or sales force in California; its products were sold only to wholesalers with whom it had no franchise agreements or other contracts. The corporation's only solicitation of business from wholesalers consisted of the mailing of its catalogue and price lists to the wholesalers who then mailed their orders to the company, which filled the orders by shipment of the products from Illinois to the wholesalers. It did no local advertising, paid no California taxes and listed no office in California in its catalogues or in any telephone directory and owned no property in the state.

The District Court of Appeal, First District, Division 2, ruled that the facts did not show that the petitioner was doing business in California so as to make it subject to the process of California courts. The petitions sought were granted.

Estwing Manufacturing Co. v. Superior Court, 275 P. 2d 146. Pillsbury, Madison & Sutro and John B. Bates of San Francisco and Anthony P. Brown of Burlingame, for petitioner. Morgan & Beauzay of San Jose, for respondents.

MICHIGAN

Foreign corporation held not to have become a domestic corporation upon qualifying so as to be barred from the Federal courts on the basis of lack of diversity of citizenship.

The action was commenced in a state court by a Michigan resident against the defendant, an Illinois corporation authorized to do business in Michigan. The defendant removed the action to the Federal district court on the basis of the diversity of citizenship of the parties and a judgment was obtained in its favor. Thereupon, the plaintiff moved to vacate and set aside the judgment and to remove the action to the state court on the ground that there was no diversity of citizenship entitling the defendant to remove the action to the Federal court. This was based upon the contention that the defendant, by obtaining permission to do business as a foreign corporation in Michigan and by designating a local agent for service of process, had become a domestic corporation and that there was, consequently, no diversity of citizenship as required by the Federal law.

The United States District Court, W. D. Michigan, N. D., observed that the test as to whether the defendant was entitled to remove the action from the state court to the Federal court was whether the Federal court would have had original jurisdiction. In denying the plaintiff's motion, the court ruled that the defendant was a citizen of Illinois, it being clear that obtaining a license to do business and appointing a resident agent did not make the defendant a domestic corporation and a citizen of Michigan. "Therefore, on the basis of diversity of citizenship, this district court would have had original jurisdiction of this civil action under 28 U.S.C.A. Section 1332(a)(1). As

this court would have had original jurisdiction of action, it has jurisdiction upon removal under 28 U.S.C.A. Section 1441(a). There is no justification or legal basis for plaintiff's contention that the defendant is a domestic Michigan corporation and a citizen of Michigan and that there is no diversity of citizenship."

Nyberg v. Montgomery Ward & Co., 123 F. Supp. 599. Doyle & Doyle and Thurman B. Doyle of Menominee, for plaintiff. Barstow & Barstow and George Barstow and Steven G. Barstow of Menominee and John A. Barr of Chicago, Illinois, for defendant.

NEW YORK

Foreign corporation maintaining six full-time salesmen in state ruled doing business so as to be subject to service of process.

The question presented to the Supreme Court, Appellate Division, Third Department, was whether jurisdiction had been acquired over one of the defendants, a foreign corporation, by service made on one of its salesmen in New York. The corporation had no office, no bank account, and no property in the state. It retained continuously in New York six full-time sales representatives who had territories in various parts of the state. The court ruled: "By the regular maintenance of such sales organization of this magnitude and dimension operating persistently and on full-time and under constant supervision of the corporation, Acme is deemed to have been doing business sufficiently in New York to have become subject to our process." It was also observed that the corporation's activities were "something more in degree than 'mere' solicitation".

The question of whether or not the salesman served was to be treated as a "managing agent" within the scope of the Civil Practice Act, Section 229, subd. 3, no officer or director having been served, was touched upon by the court when it remarked that the defendant had constructive knowledge that its agent "represented himself to be the district manager" for the corporation. The court concluded that the agent's authority raised a question of fact to be settled by the trial court.

Benware v. Acme Chemical Company, Inc. et al., 135 N. Y. S. 2d 207. Herron, Lawler & Fischer, for defendant-appellant, Acme Chemical Co., Inc., appearing specially, Francis H. Lawler, of Malone, of counsel. Robinson & Holcombe, Kenneth H. Holcombe of Plattsburg, of counsel, for respondent.

Service on foreign corporation, having no representative in state at time of service, set aside.

Service upon an Ohio corporation was effected by serving its president while temporarily within the state of New York for the purpose of embarking upon a cruise to South America. The company was successful in obtaining an order in the Federal District Court to dismiss the service on the ground that it was not doing business in New York. This judgment was affirmed by

the United States Court of Appeals, Second Circuit, upon evidence that the corporation had had no representative in the state for three years prior to the service, and that its exports to foreign countries during those three years had been effected by the Ohio plant through "independent organizations." Shipments into the state were made to distributors who sold to their own customers and who maintained their own service and maintenance departments in the state. The fact that bank accounts were maintained and used exclusively to establish credit standing and to discount notes received on export matters, was regarded as less than enough to show the presence of the company in the state on the date of service.

Knight v. Stockard S. S. Corp., 214 F. 2d 727. Robert E. Goldstein of New York City, for W. A. Riddell Corp., third-party defendant-appellee. Haight, Deming, Gardner, Poor & Havens of New York City, and J. Ward O'Neill and Robert M. Julian, of New York City, of counsel, for defendant and third-party plaintiff-appellant.

taxation

OHIO

General deposits in out-of-state banks, withdrawable as such by depositor domiciled in Ohio, not segregated for special purposes by depositor, ruled taxable in Ohio.

The appellant, an Ohio corporation with its principal place of business in Illinois, which was a product-producing and commercial entity operating in many states, appealed from a decision of the Board of Tax Appeals of Ohio finding taxable several types of intangible personal property. These consisted of deposits, general in form and not designated as deposits for any particular purpose, in banks outside of Ohio.

The Ohio Supreme Court said: "The sole question presented is whether general deposits in out-of-state banks, withdrawable as such by a corporate depositor domiciled in Ohio, but which were held unsegregated and undesignated by such depositor as taxes collected for federal and state governments, taxes on dividends payable to aliens under provisions of the Internal Revenue Code, funds for the payment of dividends to holders of record of preferred and common shares of the depositor, declared as of a previous date but payable on a subsequent date, and royalties due to owners of oil leases, were taxable as deposits of such depositor by the taxing authorities of the state."

After a consideration of pertinent Ohio decisions, the court concluded that the various items were taxable as intangible personal property.

Pure Oil Co. v. Peck,* 123 N. E. 2d 428. Bricker, Marburger, Evatt and Barton of Columbus, for appellant. C. William O'Neill, Attorney General and William E. Herron, Assistant, for appellee. *(Appeal filed in the Supreme Court of the United States, March 18, 1955; Docket No. 659.)* *(See page 116.)*

* The full text of this opinion is printed in the **State Tax Reporter**, Ohio, page 11,250.

state legislation

Colorado — House Bill 198 amends the existing law to permit the by-laws of a Colorado company to include provisions regulating the guaranteeing of payment of loans made to employees.

Idaho — Chapter 96 repeals sections of the Idaho Code placing restrictions on the ownership and transfer of property by aliens or by corporations in which a majority of the capital stock is owned by aliens.

The rates of the annual license tax of domestic and foreign corporations have been increased, effective July 1, 1955. The various new brackets range from $20 where the authorized capital stock does not exceed $5,000, to $300, where the authorized capital stock exceeds $2,000,000.

House Bill 214 provides for withholding at the source, beginning July 1, 1955, with quarterly returns and payments to the State Tax Collector.

Maine — H. B. 272 provides that the Secretary of State is deemed the agent for service of process upon a foreign corporation which is doing business in the state without having appointed an agent for the service of process.

Montana — House Bill 144 provides for withholding at the source beginning July 1, 1955, with quarterly returns and payments to the State Board of Equalization.

South Dakota — Senate Bill 298 permits the merger or consolidation of domestic and foreign corporations or two domestic corporations. The resulting or surviving corporation may be either a domestic or foreign corporation.

Tennessee — Effective June 1, 1955, the rate of the sales and use tax is increased from 2% to 3%, as a result of the enactment of Chapter 51.

Vermont — House Bill No. 119 adds a new provision containing procedure for the dissolution of a domestic corporation which has not had its first organizational meeting and elected officers.

Washington — Chapter 143 amends the statutes relating to the agent for the service of process of a foreign corporation to permit the appointment of "a corporation authorized to do business and act as such agent in this state."

appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

OHIO. Docket No. 659. *Pure Oil Co. v. Peck*, 123 N. E. 2d 428. (The Corporation Journal, June—July, 1955, page 114.) Intangible property taxes—out-of-state bank deposits. **Appeal filed, March 18, 1955. May 16, 1955:** *Per curiam:* The motion to dismiss is granted and the appeal is dismissed for want of a properly presented substantial Federal question.

OKLAHOMA. Docket No. 512. *S. Howes Company, Inc. v. W. P. Milling Company*, 272 P. 2d 1039, 277 P. 2d 655. (The Corporation Journal, October—November, 1954, page 34.) Service, under statute, on state official as agent for unlicensed foreign corporation. **Appeal filed, January 3, 1955. Jurisdiction noted, February 28, 1955.** (75 S. Ct. 437.) **Dismissed by agreement of counsel, April 5, 1955.** (75 S. Ct. 575.)

PENNSYLVANIA. Docket No. 701. *Commonwealth v. Budd Co.*, 108 A. 2d 563. (The Corporation Journal, February—March, 1955, page 74.) Income tax—deduction of net operating carry-back losses—resettlement—act barring deduction. **Appeal filed, April 4, 1955.**

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* Data compiled from **CCH U. S. Supreme Court Bulletin**, 1954-1955.

regulations and rulings

Alabama — A person engaged in manufacturing and selling concrete, who also contracts to build driveways and do other contracting work, must purchase a manufacturer's license, even though he has already purchased a contractor's license. (Opinion of the Attorney General, State Tax Reporter, Alabama ¶ 39-515.)

California — Aircraft parts and supplies sold at retail by a California retailer to a foreign purchaser, delivered f.o.b. at a point in California where an agent of the purchaser receives them, makes preparations for their export, and then ships them to a foreign destination, are subject to sales tax. (Opinion of the Attorney General to the State Board of Equalization, State Tax Reporter, California, ¶ 200-288.)

Kentucky — A corporation may designate a new process agent either by statement or by an amendment to the articles of incorporation. The $5. fee must be paid to the Secretary of State in either case. (Opinion of the Attorney General, State Tax Reporter, Kentucky, ¶ 1-602.)

Maryland — The Maryland use tax may be imposed constitutionally upon the use, storage or consumption of tangible personal property brought into Maryland under the following circumstances: (1) where a nonresident manufacturer of machinery leases machinery to a resident of Maryland for use in the state, or (2) where a nonresident contractor builds roads for the State Roads Commission. The use tax, when so applied, does not discriminate against interstate commerce. (Opinion of the Attorney General to the Assistant Director, Retail Sales Tax Division, State Tax Reporter, Maryland, ¶ 200-051.)

If a storage tank, when erected by a vendee-contractor, is personalty, the contractor would be required to collect the state sales tax from the purchaser on the full selling price. If the tank is realty, when erected, the tax would be paid by the contractor on the raw materials which he purchased in order to erect it. (Opinion of the Attorney General to the Assistant Director, Retail Sales Tax Division, State Tax Reporter, Maryland, ¶ 200-049.)

North Carolina — Small loans are subject to the intangibles tax. (Opinion of the Attorney General, State Tax Reporter, North Carolina, ¶ 25-105.)

Tugboats, owned by a North Carolina resident and engaged in interstate commerce, are taxable at the owner's residence unless they have a dock or base elsewhere. (Opinion of the Attorney General, State Tax Reporter, North Carolina, ¶ 20-701.)

North Dakota — The 5% discount should be allowed upon the payment of all real estate taxes, even though special assessment installments are not paid. (Opinion of the Attorney General to the State's Attorney, State Tax Reporter, North Dakota, ¶ 24-033.)

Utah — While a city ordinance may not prohibit solicitation, there is no legal objection to an ordinance licensing or otherwise regulating door to door solicitation, and there is no question of unlawful interference with interstate commerce. (Opinion of the Attorney General, State Tax Reporter, Utah, ¶ 30-010.)

some important matters

For June and July

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alaska — Returns of Tax Withheld at the source due on or before July 31.—Domestic and Foreign Corporations.

Arizona — Quarterly Withholding Tax due on or before July 31.

Arkansas — Anti-Trust Affidavit due on or before August 1.—Domestic and Foreign Corporations.

California — Quarterly Retail Sales Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

Colorado — Quarterly Withholding Tax due on or before July 31.

Connecticut — Quarterly Retail Sales Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

Delaware — Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

Withholding at source Returns due July 31.—Domestic and Foreign Corporations paying compensation to Delaware employees.

Dominion of Canada — Income Tax Return due on or before June 30.—Domestic and Foreign Corporations.

Florida — Annual Report and Fee due on or before July 1.—Domestic and Foreign Corporations.

Idaho — Annual Statement and Annual License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

Illinois — Annual Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

Indiana — Annual Report due within 30 days after June 30.—Domestic and Foreign Corporations.

Quarterly Gross Income Tax Returns and Payments due on or before July 31.—Domestic and Foreign Corporations.

Iowa — Annual Report due between July 1 and August 1.—Domestic and Foreign Corporations.

Statement of Capital and Property Increase due at the time of filing of the Annual Report in July.—Foreign Corporations.

Report of certain Transfers of Stock due on or before July 1.—Domestic Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 20.—Domestic and Foreign Corporations.

Kentucky — Statement of Existence due in June.—Foreign Corporations.

Verification Report as to process agent due in June.—Domestic and Foreign Corporations.

Quarterly Withholding Tax due on or before July 31.

Maryland — Quarterly Withholding Tax due on or before July 31.

Michigan — Report of Unclaimed Moneys, Securities, Credits, etc., due on or before June 30.—Domestic and Foreign Corporations.

Mississippi — Annual Franchise Tax Report and Tax due on or before July 15. —Domestic and Foreign Corporations.

Annual Report and Fee to Factory Inspector due in July.—Domestic and Foreign Corporations employing five or more persons in Mississippi.

Missouri — Annual Registration Statement and Anti-Trust Affidavit due on or before July 31.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 15.—Domestic and Foreign Corporations.

Montana — Annual License Tax based on net income due on or before June 15. —Domestic and Foreign Corporations.

Nebraska — Annual Report and Franchise (Occupation) Tax due on or before July 1.—Domestic Corporations.

Annual Report and Franchise (Occupation) Tax due during July.—Foreign Corporations.

Nevada — Annual List of Officers and Designation and Acceptance of Resident Agent due on or before July 1.—Domestic and Foreign Corporations.

North Carolina — Annual Franchise Tax Report and Tax Due on or before July 31.—Domestic and Foreign Corporations.

North Dakota — Corporation Report due during July.—Domestic Corporations.

Quarterly Retail Sales Tax Returns and Payments due on or before July 20.—Domestic and Foreign Corporations.

Ohio — Annual Franchise Tax due on or before July 15.—Domestic and Foreign Corporations.

Retail Sales Tax Returns and Vendors' Excise Tax due on or before July 31.—Domestic and Foreign Corporations.

Oklahoma — Annual Capital Stock Affidavit due between July 1 and August —Foreign Corporations.

Annual Franchise Tax Return and Payment due between July 1 a August 31.—Domestic and Foreign Corporations.

Oregon — Annual Statement due between June 1 and August 1.—Domestic a Foreign Corporations.

Annual License Fee due within 30 days after July 15.—Domest Corporations.

Quarterly Withholding Tax due on or before July 31.

Annual License Fee due between July 1 and August 15.—Foreig Corporations.

South Dakota — Quarterly Retail Sales Tax Returns and Payments due before July 15.—Domestic and Foreign Corporations.

Tennessee — Annual Privilege (Franchise) Tax Return and Payment, Annu Report and Tax and Excise Tax Report and Tax due on or before July —Domestic and Foreign Corporations.

Report of Dividends paid to residents due on or before July 1.— Domestic and Foreign Corporations.

United States — Second Installment of Income Tax due June 15.—Domest Corporations and Foreign Corporations having offices or places o business in the United States.

Utah — Quarterly Retail Sales Tax Returns and Payments due on or befor July 30.—Domestic and Foreign Corporations.

Washington — License Fee due on or before July 1.—Domestic and Foreig Corporations.

West Virginia — License Tax Statement due on or before July 1.—Domesti Corporations.

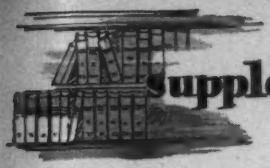
Annual License Tax due on or before July 1.—Domestic and Foreig Corporations.

Fee to State Auditor as Attorney in Fact due on or before July 1.— Foreign Corporations and those Domestic Corporations whose principa place of business or chief work was located in other states.

Quarterly Business and Occupation (Gross Sales) Tax Returns an payments due on or before July 30.—Domestic and Foreign Corporation

Wisconsin — Second Installment of Income Tax due on or before August 1.— Domestic and Foreign Corporations.

Wyoming — Annual Statement and License Tax due on or before July 1.— Domestic and Foreign Corporations.



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In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

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THE CORPORATION TRUST COMPANY
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Form 3547 requested

The CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company bi-monthly, February, April, June, August, October and December. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

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